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Paper No.

PATTI, HEWITT & AREZINA LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO IL 60602

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OFFICE OF PETITIONS

In re Application of

Magyar et al.

Application No. 10/667,257

ON PETITION

Filed: September 19, 2003 : Atty Docket No. 920047-94539

This is in response to the "PETITION TO WITHDRAW THE HOLDING OF AN ABANDONMENT" filed August 26, 2008 (and resubmitted September 10, 2008).

The above-identified application became abandoned for failure to pay the Issue Fee and Publication Fee within three months of the mailing date, April 3, 2008, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. The issue fee and publication fee were received but determined to not be sufficient. payment received, the above-identified application became abandoned effective July 4, 2008. A courtesy Notice of Abandonment was mailed on August 1, 2008.

In response, applicant promptly filed the instant petition. Applicant acknowledges that the Issue Fee Transmittal, submitting the issue fee and publication fee, inadvertently checked "Box 4b, which states Applicant is no longer claiming SMALL ENTITY status." Moreover, the Credit Card form mailed along with the Issue Fee Transmittal incorrectly stated the amount of "1,700.00." Applicant states that the correct amount should have been \$1,020.00.

Applicant's arguments have been considered, but not found persuasive to withdraw the holding of abandonment. At the time of payment of the issue fee, applicant is required to make a determination of continued entitlement to small entity status. By checking "Box 4b", applicant asserted a loss of entitlement to small entity status. As such, the payment of the issue fee and publication fee in less than the amount for a large entity was determined to be insufficient. Consequently, the application was properly deemed abandoned. Under these circumstances, withdrawal of the holding of abandonment is not warranted.

The petition under § 1.181 is **DISMISSED**.

Any request for reconsideration must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are not permitted. See 1.181(f).

Alternatively, applicant may seek revival under the provisions of 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in \$ 1.20(d)) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition

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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Sen for Petitions Attorney

Office of Petitions